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THE CRIME OF BLASPHEMY IN THE POLISH PENAL CODE OF 1932

In 1918 after the end of World War I Poland regained its independence and established the Second Republic. While the Polish Penal Code was introduced 14 years later in 1932¹ and from that moment we can talk about Polish criminal law and provided for that type of law the role of a guarantor of freedom of conscience and religion.

In the period between the two world wars, it is in the years 1918 - 1939 were introduced in Poland two Constitutions, first in 1921 and second in 1935. Those Constitutions of the Second Republic ensured the freedom of conscience and religion in the country. The state guaranteed all citizens freedom of religion and forbade them any limitation of rights because of religion and religious beliefs. In both Constitutions also provided all the inhabitants of the Republic the right to freely profess so publicly and privately their faith and the performance standards of religion or rite, unless it was contrary to public order or public decency². At the same time the legislator stated that: „freedom of religion must not be used in a manner contrary to the law. No one can evade the fulfillment of public duties because of his religious beliefs. No one can be forced to participate in religious activities or rites unless it is subject to parental or legal guardian”³.

The Second Republic of Poland guaranteed to every legitimate religious organization the right to self-determination of collective and public religious services, conducting its affairs, possess and acquire movable and immovable property, management and disposition, possession and use of foundations and funds

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¹ Ordinance of the President of the Republic on 11 July 1932 – Penal Code, Journal of Laws 1932, No. 60, item 571.

² Look at the article 111 of the Polish Constitution of March 17, 1921, Journal of Laws 1921, No. 44, item 267. That article 111 was upheld by the Constitution of April 23, 1935, Journal of Laws 1935, No. 30, item 227.

³ Article 112 of the Polish Constitution of March 17, 1921. The article 112 was upheld by the Constitution of April 23, 1935.

and facilities for religious, scientific and charity purposes⁴. However no religious association could not act in conflict with the applicable laws. The article 116 of the Constitution of 1921 states that: „The legal recognition of a new one or previously unrecognized religion will not be denied to religious associations whose structures, teachings and organization are not contrary to public order or public morality”.

It was typical for the period of the Second Republic that in the Constitutions of 1921 and 1935 there was a special role in the country for the Catholic religion, which the legislature decided in the content of art. 114 of the Constitution of 1921 (maintained also in legal force by the Constitution of 1935)⁵. According to the article: „Roman Catholic confession which is the religion of the overwhelming majority of the nation has the supreme position among all religions which have equal rights in the State” and also: „The Roman Catholic Church is governed with his own rights. Relations between State and the Church will be determined on the basis of an agreement with the Vatican City State, which is subject to ratification by the Parliament”. At the same time the legislature has determined that: „the Churches of religious minorities and other legally recognized religious associations are governed by the their own laws, which the State do not refuses to recognize, unless they contain decisions contrary to the law. The State relations with these churches and faiths will be determined by legislation after consultation with their legal representations”⁶.

It is this notation that Roman Catholic faith „(...) has the supreme position among all religions which have equal rights in the State” makes it difficult to determine the Second Polish Republic as ideologically neutral and therefore fully secular. In fact introduced in the Constitution of 1921 system of relations between state, religion and religious associations had the character of linking the state with religion, and not a separation of state and religion⁷.

We can wonder how religions could have equal rights according to the Constitution if at the same time one of them acknowledged the role of acting „chief position” and the other were described as „churches of religious minorities and other legally recognized religious associations”. The fact is that in the Second Republic equality of religious associations was often merely illusory⁸.

We should also take into account the demographics to the number of religions in Poland, as the Second Republic was a state not homogeneous in terms of eth-

⁴ Article 113 of the Polish Constitution of March 17, 1921. The article 113 was upheld by the Constitution of April 23, 1935.

⁵ J. Osuchowski, *Prawo wyznaniowe RP 1918–1939*, Warszawa 1967.

⁶ The art. 115 of the Polish Constitution of March 17, 1921. The article 115 was maintained by the Constitution of April 23, 1935.

⁷ M. Staszewski, *Wolność sumienia przed trybunałem II Rzeczypospolitej*, Warszawa 1970; K. Krasowski, *Episkopat katolicki a II Rzeczypospolita, myśl o ustroju państwowym, postulaty, rezolucje*, Warszawa–Poznań 1992.

⁸ K. Krasowski, *Związki wyznaniowe w II Rzeczypospolitej*, Poznań 1988.

nic and national factors like it is nowadays because according to the 1931 census (self-assessment of language used) the Poles constituted only 68.9% of the state population⁹. Poland was not a homogeneous country also in terms of religion and that was true during the whole period of its existence (1918–1939). So according to the census of 1921, the Roman Catholic religion professed approx. 62% of the total population, Greek Catholic religion – approx. 12%, Orthodox – approx. 11%, Judaism – approx. 11%, different types of Protestantism – approx. 2.6%, while representatives of other faiths (including Muslims, etc.) – approx. 1.4%. However, in the penultimate year of the Second Republic, according to data from 1938. made on the basis of a census, the religious situation was as follows: Roman Catholic religion – 65% of the total population, Orthodox – 11.9%, Greek Catholic religion – 10.4% , Judaism – 9.5%, different types of Protestantism – 2.5% and other religions – 1.5%. Given the fact that although the Roman Catholic religion was professed by 62-65% of the total population of the country, almost 40% of the population professed other religions or worldviews.

The constitutional rule on the chief position of the Roman Catholic faith among the „equal rights” religions must therefore be assessed highly negatively and considered simply as harmful and contrary to freedom of conscience and religion. That rule pushed the other religions to the role of secondary, while professing these people to feel like second-class citizens, since their religion was defined as a minority in relation to Catholicism – which was clearly preferred by the state and its Constitution. Recognized in this way the relationship between religion and religious groups and the state therefore had to also affect the nature of the criminal law protection that the Second Republic ensured the freedom of conscience and religion in the system of the existing criminal law.

At this point it is worth quoting the resolution of the Criminal Chamber of the Supreme Court of 1925. in which the Court sets out the reasons for which the State must guarantee the protection of the criminal law in the sphere of religious affiliation. The Supreme Court decided that: „Religion as an institution serving the interests of the broad ideal of human groups and representing their highest spiritual good is entitled to claim for itself the freedom and defense of violence and insults. Masses of believers are especially hurt by insult to their religious feelings, any attacks on freedom of worship and religious interests can cause unrest and riots. And so state in the name of social order and public peace is forced to encircle the religion of its criminal law protection”¹⁰.

Specific is the title of Chapter XXVI of the Criminal Code of 1932. - „Crimes against religious feelings”, not as in the current modern Polish code - „Crimes against freedom of conscience and religion”. This was not an accident but a deliberate choice of the legislature. As pointed out by prof. Juliusz Makarewicz, one

⁹ H. Zieliński, *Historia Polski 1914–1939*, Wrocław 1985, s. 124–126.

¹⁰ M. Pietrzak, *Wolność prasy a ochrona religii (w:) Wolność sumienia. Szkice i polemiki, praca zbiorowa*, Warszawa 1973, s. 132 i n.

of the main authors of the Criminal Code of 1932.: „In relation to crimes so called religious the Code’s position is clear, is not it the protection of civil liberties in the area of profess religious beliefs but to protect the interest of the community against attacks on important social factor, which is the religion”¹¹. Thus the criminal law protection of the freedom of conscience and religion in the criminal law of the Second Republic was based on a totally different axiology than in criminal law of Polish People’s Republic (1945-1989) and after 1989 in the Polish Third Republic. Actually the penal law in Criminal Code of 1932 was mainly aimed at the protection of religion as an important social factor that violations detrimental to the public interest. J. Makarewicz explicitly stated that: „Religious beliefs stand in the care of the Criminal Code in so far as present values of society. The state resolves the matter by „legal recognition” of a religion”¹². This meant that regulations of the criminal law include the protection of religious beliefs only recognized formally by the state¹³.

The Criminal Code in Chapter XXVI contained a catalog of the four crimes against religious feelings. Namely starting this chapter in article 172 the legislator has regulated the crime of blasphemy. Article 173 was about two forbidden acts - the first involving public insults or mockery of legally recognized religion or religious organization, its dogmas, beliefs and rituals, and the second crime - to insult object of religious worship or place made for the pursuit of religious rites of such religion or religious organization. And the last one crime was described in the article 174 and it was disturbing the collective public ceremony of a religious legally recognized religion or religious organization.

At each of these crimes the legislator required that they were committed in public, what point was to: „(...) the fact that the matter of preventing adverse effects on the masses or in the call reflex against the perpetrator and possibly the same co-religionists, or in the direction of causing religious indifference”¹⁴. This assertion was strengthened by the fact of locating the chapter on crimes against religious feelings in the vicinity of the chapter on articles criminalizing acts directed against public order (articles 152-171 of the Criminal Code of 1932).

Having these informations about criminal law of the Second Republic it is possible to proceed with the analysis of the crime of blasphemy. The content of art. 172 of the Criminal Code of 1932 was as follows: „Who publicly blasphemes God, shall be punished by imprisonment up to 5 years”.

Chapter XXVI of the Criminal Code of 1932 began from the article 172 in which the legislator has regulated the crime of blasphemy which was unheard of in the next following Polish penal codes (of 1969 and of 1997). Certainly, it can be concluded that the crime of blaspheming against God was an element rather charac-

¹¹ J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1938, s. 442.

¹² Tamże.

¹³ Articles 173 and 174 of the Criminal Code of 1932.

¹⁴ J. Makarewicz, *Kodeks...*, s. 442.

terized by the eighteenth and nineteenth-century criminal laws than a modern legal system. This article was the *de facto* the result of the existing system that linked the state with religion and the Roman Catholic Church¹⁵. Moreover, after all, it resulted directly from the Constitution of 1921 (which was also preserved by Constitution of 1935) in article 114 recognizing that Roman Catholic faith as a religion of the overwhelming majority of the nation. Roman Catholicism in the Poland had the supreme position among the all religions which in theory had equal rights.

It is logical therefore that since the state has not kept its neutrality in religious sphere, also had to somehow continue the role that for such a long period of time in history took, ie. the concept of *brachium saeculare*. It Middle Ages *brachium saeculare* meant the connection between state and Church and religion, secular authorities did protect the Church and religion beliefs and at the same time was drawing justification for its activities from religion; that type of relations between state and Church was typical when functioning of the state and social life was based on religion.

So if the overwhelming majority of the nation confessed certain religious codes such as a belief in God, the state covered that belief with its criminal law protection and also started to protect the religious feelings tied with that faith. Codification Commission in the explanatory memorandum to the draft of the Criminal Code stated that: „The backing of this (criminal) approach is to act against the dogmas of every religion as every religion is based on the deistic ground and also in terms of the legislator it can call anxiety because of the way the public acting. It is a formal statement that every religion is under the protection of the law and that the state is not allowing to insult religion in places where due to their easy availability the state must require specific behavior”¹⁶.

From today's point of view the content of this reasoning may seem at least strange because the Commission's statement that every religion is based on the deistic ground was in the past and is now not true. Religions such as Taoism and Buddhism which in terms of number of followers invests now in fourth place in the whole world, did not provide in its doctrine of some Supreme Being, God or Gods. Thus either members of the Commission have shown a blatant ignorance of „all religions” (as they wrote in the justification of the Criminal Code) or maybe they wanted to present positive argumentation argue of the article 172 which in fact protect only the religions of deistic nature, first and foremost, of course Christianity, Judaism, Islam and Hinduism.

In the modern criminal law it is impossible to imagine a similar legal regulations in the secular country. Whereas such regulations can be found in countries

¹⁵ T. Jasudowicz, *Bluźnierstwo a kultura europejska: „pojedynek” między wolnością ekspresji a wolnością religii*, Studia Europejskie, t. II, Warszawa 1998.

¹⁶ Komisja Kodyfikacyjna Rzeczypospolitej Polskiej (Codification Commission of the Republic of Poland), *Projekt kodeksu karnego. Uzasadnienie części szczególnej*, t. V, z. 4, Warszawa 1930, s. 98.

where religion and its standards are an integral part of such a social life as well as the structure of the state and legal system, for example: Afghanistan, Iran and Saudi Arabia.

Of course the Commission reserved that the aim of the article 172 was also protection against the possibility of „induce anxiety because of the public way of committing” such blasphemy, but in spite of this, the article is fully in line with the role that the criminal law predicted in the model which links the state with religion and religious associations - and so a measure of guaranteeing the inviolability of certain kind of religious norms.

A serious mistake of the Polish legislature of the interwar period was posting this kind of penal standard in the modern for that time and almost completely well prepared in terms of substantive content Criminal Code of 1932.

Generic object of the protection of the crime described in article 172 was religious feelings of believers, while the individual object of protection should be regarded God as the Supreme Being. The perpetrator by publicly blaspheming God was attacking religious feelings, because God in the deistic religions is the center around which focus all religious principles related to the religious doctrine. The offender insulting God violates also at the same time the religious feelings of people of a specific religion. As pointed B. Wróblewski, through the humiliation of God because of blasphemy followed the humiliation of all religions, because God represented the highest value of faith¹⁷.

The lawmaker in the article 172 used the term „God” but of course in the Criminal Code there was no (though it would be difficult indeed to require it from legislator) legal definition of that term.

Recognized as the main author of the Code prof. J. Makarewicz in his commentary on the Criminal Code relating to the concept of „God” also stated that it should be recognized: „both from the point of view of pure deism, and thus as the Supreme Being understood in the abstract, but personally (as opposed to pantheism) as well as the meaning of a legally recognized religion, for example Jehovah (Jahve), Allah, the Trinity etc”¹⁸.

As apparent from the above, the concept of God to such an extent related only to his personal approach, not pantheistic, and thus meaning theological, philosophical or religious beliefs identifying God with the world often understood as nature. In this case also Supreme Court took a position in which stated that the criminal perpetrator by his act violates the rule contained in article 172 and thus blasphemes God where that will direct blasphemy against any of the three forms united in the Holy Trinity, ie. God the Father, the Son and the Holy Spirit¹⁹.

¹⁷ B. Wróblewski, *Prawo karne – skrypt*, Wilno 1938, s. 92.

¹⁸ J. Makarewicz, *Kodeks...*, s. 443.

¹⁹ J. Nisenson, M. Siewierski, *Kodeks karny i Prawo o wykroczeniach. Komentarz, orzecznictwo, przepisy wprowadzające*, Łódź 1947, s. 173.

The object of the crime of art. 172 was determined by the lawmaker through verbal mark of „public blaspheming” against God which was an imprecise definition requiring each time an interpretation by the authority applying the law (a court of law). By „blasphemy” was understood utterance (usually oral, written, but also even by gesture) which violated honor due to God. The mark was tied to both the form and the content of such statements. Blasphemy could also be considered as some type of symbols - for instance an offensive gestures insulting the Supreme Being²⁰.

The essential element relating to the criminal behavior of the perpetrator of a criminal act by the regulation of article 172 was its public character. This means that the occurrence of the crime it was necessary that the criminal blasphemed against God in public, that is in such a place and under such conditions which allow the perception of his behavior by more not marked individually and unrelated people. The mark „public” in the former Criminal Code was defined as follows: „the only criterion is the factor of the place where the action undertaken, this place has to be public, and the public is a place that is open to the public (street, public park, a playroom public). Condition of submitting a fee does not convert the hall or the park from public to private. Private is the place to which admission is restricted to individually designated persons, and on the other hand non-public are premises reserved only for members of some association or non-public nature has a private flat. Activity will be public if is undertaken in a public park even though it was spotted only by a one person, but the activity will not be public in the situation when a defamation text circulated a thousand copies in luted envelope (under the protection of the confidentiality of letters). The public will be a crowd (art. 162-163) even if gathered only a few dozen people in the street; but there will be no public concourse if in a private house will gather several hundred people invited by the owner of the apartment and familiar to him. Publicly available is a local shop, hall or courtyard of a tenement house, restaurant or coffee shop, car tram, bus, railway wagon, etc.”²¹.

Moreover in terms of considerations relating to the term „public” precious seems to cite the following statements illustrating the views of Polish criminal law doctrine: „What factor decides on the public action? Will greater number of people present at the activity? On this question we get a negative answer (...)”²². For public blasphemy could be considered behavior involving the dissemination of offensive writings, printed matter, images, etc.

It should be noted that by blaspheming against God did not understand the denial His existence, it was not penalized by law. However if such denial was connected with abusing God and the intention of the perpetrators was to hurt

²⁰ L. Peiper, *Komentarz do Kodeksu karnego*, Kraków 1933, s. 485.

²¹ J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1932, s. 176-177.

²² *Ibidem*, s. 176.

the religious feelings of other people, such an act was considered fulfilling the characteristic of the crime by article 172.

The crime of blasphemy regulated in art. 172 of the Criminal Code of 1932 belonged to a set of crimes without effect. This was due to the fact that both the doctrine and judicature considered that the existence of this criminal act was not necessary to cause any effect of the so-called public scandal or appearance of the real feelings of resentment in other people.

For criminal law standards referred to in article 172 to make it a crime described in was enough only a behavior of the perpetrator which could cause a risk of an adverse experience (in the sphere of religious feelings) of the recipients of this behavior.

In addition as indicated Codification Commission in the reasoning of the Criminal Code because the resentment (indignation) is dependent on subjective and individual moods of individuals which are difficult to establish in a precise and unambiguous way²³.

As it comes to the person (perpetrator) of a blasphemy, it was a crime which could have been committed by every human being capable of incurring criminal liability, ie. mentally sane and one that at the time of committing a criminal was at least 17 years old. The legislator did not provide for the perpetrator of the crime of blasphemy any special individualised attributes.

However, if the perpetrator was a minor at least 13 years old but before the age of 17 and he (or she) committed a criminal act under the threat of criminal punishment and the perpetrator reached mental and moral development to the extent that he could recognize the importance of his action and he was able to guide his own actions, the court sentenced such minor to put in a correctional facility for juveniles²⁴.

When it comes to the type of fault of the criminal it was said that blasphemous crime was an intentional crime²⁵. The intention of the criminal also included awareness of the meaning of his act for the religious feelings of others and thus the perpetrator was aware of the possibility of induce them outraged by his certain behavior.

Talking about the stages of a crime, in cases where the perpetrator with the intention of committing a crime of blasphemy undertook action directed at achieving this intention but was not able to commit crime (he failed) then his behavior was determined as an attempt (article 23 § 1 of the Criminal Code of 1932) for which the court ruled a penalty within the limits provided for a criminal act by the regulation of article 172.

²³ Komisja Kodyfikacyjna Rzeczypospolitej Polskiej (Codification Commission of the Republic of Poland), *Uzasadnienie Części Szczegółnej*, s. 98.

²⁴ Article 70 of the Criminal Code of 1932.

²⁵ Article 14 of the Criminal Code of 1932.

Alternatively if it was an inept attempt (article 23 § 2) which meant a situation where the perpetrator did not know that it is not possible to commit a crime due to lack of object suitable to carry on the deliberate crime or due to the use of the means which were not suitable to induce the desired effect by the perpetrator – in such situations the court could apply an extraordinary mitigation of punishment (article 24 § 2).

According to the article 25 of the Code a criminal was released from criminal responsibility for an attempted of a crime of public blaspheming against God if he voluntarily withdrew from the criminal act or he has prevented the effect of the crime.

Considering forms of cooperation in a crime, it was possible to incitement to commit a crime of public blaspheming against God (article 26) when the instigator induced another person to commit this crime and also it was possible to helping a criminal when the helper act to help to commit blasphemy by certain behavior (article 27). Instigator and helper incur criminal liability within the limits of their intention (and thus within the range of punishment provided for the crime which they incited or helped to) (article 28). In the situation when a crime was not committed the instigator and helper incur criminal liability as for the attempted that crime (article 29 § 1). If the crime does not even attempted the instigator and the helper were also responsible for the attempt. However the court could ruled against them extraordinary mitigation of punishment or even release them from punishment (article 29 § 2).

The legislator for the crime of blasphemy established imprisonment from 6 months to 5 years. From today's point of view the type of criminal sanction and its dimension certainly should be considered to be too harsh. It seems incorrect that the legislator for the crime of blasphemy did not foresee nor the penalty of arrest or fine.

The crime of public blaspheming against God in the class of all crimes against religious feelings was the criminal act threatened the most severe penal sanction in terms of its severity.

From the catalog of additional penalties for the offense of blasphemy court could rule above all: the loss of the right to practice a profession (article 44 letter c of Criminal Code of 1932) if the offender abused the profession in committing the crime of blasphemy or in the case of disability disclosed in committing this crime and dangerous to the society (article 48 § 2); forfeiture of the tools that were used or were intended to commit the crime (article 44 letter e); and the announcement of the judgment in the magazines, journals and newspapers (article 44 letter f) which the court could order at the expense (cost) of the convicted person if the offense was committed by printing some blasphemous text in a newspaper, journal, book, etc. (article 51 § 1).